

of section 204(e) of the Act should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Issued at Washington, DC this 19th day of March, 1993.

## PART 1550—PROGRAMS TO HELP DEVELOP FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

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AUTHORITY: Sec. 601 of the Agricultural Act of 1954, as amended (7 U.S.C. 1761); Secs. 108(d)(2)(B) and 108(f) of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1708); Sec. 4214(d) of the Agricultural Competitiveness and Trade Act of 1988 (7 U.S.C. 5234(d)); E.O. 12220, 45 FR 44245.

SOURCE: 54 FR 37784, Sept. 13, 1989, unless otherwise noted.

### § 1550.1 Purpose and scope.

(a) This part sets forth policies and requirements with respect to the conduct by the FAS of programs utilizing public or private entities in the United States to help develop foreign markets for United States agricultural commodities on a mutually benefiting basis. As far as practicable, FAS relies upon representatives of the private U.S. agricultural sector to carry out market development activities through cooperative agreements.

(b) These activities include entering into contracts pursuant to which FAS procures, for a stated consideration, property and services needed in developing markets for U.S. agricultural commodities.

### § 1550.2 Definitions.

(a) *Agricultural commodities* includes agricultural commodities and products thereof.

(b) *Affiliate or affiliated organization* means any partnership, association, company, corporation, trust, or any other legal entity in which the program participant has any investment other than an investment in any mutual fund.

(c) *Cooperator* means an entity entering into a Market Development Project Agreement.

(d) *Export Incentive Program Agreements* mean cooperative agreements between FAS and a private United States entity for the purpose of maintaining, expanding or creating foreign markets for United States agricultural commodities through the promotion of brand-identified agricultural commodities.

(e) *FAS* means the Foreign Agricultural Service of the United States Department of Agriculture.

(f) *Incentive payment* means FAS reimbursement for eligible promotion costs incurred under the terms of an Export Incentive Program Agreement.

(g) *Market Development Project Agreements* mean cooperative agreements between FAS and United States agricultural trade associations or associations of State Departments of Agriculture for the purpose of maximizing sales in foreign markets of U.S. agricultural commodities. Activities to be undertaken are intended to promote specific commodities on a generic or brand-identified basis, or through programs which include both elements.

(h) *Participant or program participant* means any entity entering into an agreement within the scope of this part 1550.

(i) *Project funds* are funds made available by FAS to program participants.

(j) *Sales teams* are teams engaged in activities intended to result in specific sales by team members.

(k) *Trade teams* are teams engaged in activities to promote the interests of the entire agricultural sector represented by the program participant.

### § 1550.3 Market Development Project Agreements.

(a) *Eligible Organizations*. In selecting trade and Agricultural groups as co-operators, representative nonprofit U.S. agricultural trade organizations will be used to the maximum extent

possible. Organizations selected should represent the commodity being promoted on the broadest possible basis, with priority given to those which are industry-wide or nationwide in membership and scope. Cooperators must demonstrate an ability to provide U.S.-based staff capable of developing, supervising, and carrying out projects overseas, and be willing and able to contribute resources to a joint project.

(b) *Use of Third Parties.* A Cooperator that enters into a Market Development Project Agreement may undertake market development activities directly or through a third party provided that such Cooperator remains responsible for the activities of the third party.

(c) *Contributions.* Cooperators are expected to contribute funds or make in-kind contributions towards completion of approved market development projects. Contributions by third parties will be accepted as partially satisfying the contribution obligation of the Cooperator.

(d) *Project Funds.* FAS will make funds available, up to the amount stated in the Market Development Project Agreement, to reimburse Cooperators for expenditures incurred in conducting activities authorized by the agreement and budgeted in a marketing plan approved in advance by FAS. Funds will be paid in United States dollars unless the Cooperator and FAS specifically agree that payment will be made in foreign currencies.

(e) *Consideration of Projects.* Market Development Project Agreements will be entered into by FAS only if it is determined that such agreements could contribute to the effective creation, expansion, or maintenance of foreign markets for U.S. agricultural commodities based on available supplies of those commodities for export and international market conditions. Marketing plans will be required from organizations selected to participate in Market Development Project Agreements and will serve as a basis for the expenditure of funds committed to Market Development Project Agreements. Marketing plans will be reviewed according to the following criteria:

(1) The market potential for the commodities covered in the markets iden-

tified for promotional effort and the identification of conditions affecting the level of U.S. exports which could be influenced by the projects proposed;

(2) The extent and complexity of activities proposed in relation to each Cooperator's prior export market development experience and U.S.-based staff resources;

(3) The likelihood of these activities influencing conditions affecting the level of U.S. exports.

#### **§ 1550.4 Export Incentive Program Agreements.**

(a) *Eligible Organizations.* Export Incentive Program (EIP) agreements will be entered into with private U.S. entities.

(b) *Use of Third Parties.* An entity that enters into an Export Incentive Program Agreement may undertake market development activities directly or through a third party provided such entity remains responsible for the activity.

(c) *Reimbursement.* After submission of a claim for an incentive payment, FAS will reimburse a percentage of eligible promotion costs defined in the Export Incentive Program Agreement, up to the amount stated in the Agreement, to carry out the purposes of the project. Such a claim will be submitted on a marketing year basis or at such other time as may be agreed by FAS. The amount of funds to be paid by FAS on each claim will be specified in the Agreement and will be based upon either a stated percentage of the promotional expenditures claimed, volume of exports over a stated period, or a combination of both. Funds will be paid in U.S. dollars only.

(d) *Consideration of Projects.* Export Incentive Program Agreements will be entered into by FAS only if it is determined that such agreements with private firms could contribute to the effective creation, expansion, or maintenance of foreign markets for the commodities concerned. Project proposals will be reviewed in relation to market conditions in the countries where activities are proposed, and in relation to the proposing firm's prior experience in exporting and in market promotion activities abroad, based upon the same criteria set forth in § 1550.3(e)(1)–(3).

**§ 1550.5 Program participation and benefits.**

(a) *Scope.* This section establishes requirements applicable only to participation in Market Development Project Agreements and any other agreement with FAS that specifically incorporates the provisions of this part.

(b) *General.* It is the policy of FAS to insure that the benefits generated by agreements are as broadly distributed throughout the relevant agricultural sector as feasible and, particularly, that no program participant derive an unfair advantage or benefit from activities conducted pursuant to the agreement, whether funded with project funds or industry contributions.

(c) *Industry Participation.* When required by FAS, program participants shall promptly furnish to FAS for approval its criteria for the selection of U.S. agricultural industry representatives to participate in activities conducted pursuant to the agreement such as trade teams, sales teams, and trade fairs, and its criteria for the selection of firms to participate in U.S. brand-identified promotions. Such criteria must ensure participation on an equitable basis by a representative cross section of the relevant U.S. agricultural industry. If FAS requests submission of criteria for approval, the program participant shall not use criteria disapproved by FAS after the program participant has been notified of FAS's disapproval.

(d) *Distribution of Information.* All program participants shall provide, on a timely basis, upon request of any entity in the United States, other than a representative of a foreign government, any and all data developed and produced with project funds or contributions. Any fee charged in connection therewith may not exceed the costs incurred in assembling, duplicating and distributing the requested material.

(e) *Export Activities and Related Services.* (1) Neither program participants nor their affiliated organizations shall, during the term of the agreement, make export sales of agricultural commodities of the kind which are promoted, in whole or in part, with project funds.

(2) Neither the program participants nor affiliated organizations may assess fees for services provided to exporters in facilitating an export sale if the promotional activities intended to directly result in that specific export sale are supported, in whole or in part, by project funds. This paragraph applies to activities such as those involving discussions with potential buyers or the solicitation of specific sales including activities performed by sales teams and performed through trade fairs rather than activities of a more general promotional nature. This paragraph does not apply to checkoffs or membership dues based on commodity sales, when such assessments are a condition of membership in the participating organization.

(3) Participants in approved program activities shall not use the activities to promote private self-interests or conduct private business, except as members of sales teams or as part of a U.S. brand-identified promotion when such activities are specifically approved by FAS.

**§ 1550.6 Compliance with program requirements.**

(a) Within 30 days after the effective date of these regulations, program participants shall submit a written statement to the Administrator, FAS, that neither they, nor their affiliated organizations, will make export sales of agricultural commodities promoted, in whole or in part, with project funds during the term of any agreement between the program participant and FAS within the scope of § 1550.5. FAS may from time to time require program participants to submit certifications as to export sales for purposes of this part.

(b) In the event of noncompliance with any provision of these regulations, FAS may disallow a claim submitted under an agreement for expenses incurred after the effective date of these regulations or terminate the agreement in addition to any other remedy available to FAS.

**§ 1550.7 Paperwork Reduction Act assigned number.**

Information collection requirements contained in these regulations have

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been submitted to OMB for approval under control number 0551-0026. However, these requirements are not effective until final clearance is received from OMB.

### PART 1560—PROCEDURES TO MONITOR CANADIAN FRESH FRUIT AND VEGETABLE IMPORTS

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1560.2 Definitions.

1560.3 Determination of fresh fruit or vegetable.

1560.4 Calculation of data to support imposition of temporary duty.

1560.5 Calculation of data to support removal of temporary duty.

AUTHORITY: Secs. 105 and 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100-449 (102 Stat. 1855 and 1865-67).

SOURCE: 54 FR 1327, Jan. 13, 1989, unless otherwise noted.

#### § 1560.1 Scope.

This part outlines the procedures that will be used by the Administrator of the Foreign Agricultural Service to monitor and inform the Secretary of Agriculture of data regarding the importation of fresh fruits and vegetables from Canada.

#### § 1560.2 Definitions.

The following definitions shall be applicable to this part:

(a) *Administrator* means the Administrator of the Foreign Agricultural Service, United States Department of Agriculture.

(b) *Average Monthly Import Price* means the average unit value for all shipments of a particular Canadian fresh fruit or vegetable imported into the United States from Canada during a particular calendar month based on official data from the U.S. Customs Service and/or the Bureau of Census, and shall be calculated by dividing the total value of the fresh fruit or vegetable imported in that month by the total quantity of the fresh fruit or vegetable imported in that month.

(c) *Average Planted Acreage* means the average of the annual planted acreage in the U.S. for a particular fresh fruit or vegetable for the preceding five

years excluding the years with the highest and lowest acreages based on available data from agencies within the United States Department of Agriculture and data from appropriate state agencies, as required.

(d) *Canadian fresh fruit or vegetable* means a fresh fruit or vegetable that is a product of Canada as determined in accordance with the rules of origin set forth in section 202 of the U.S.-Canada Free-Trade Agreement Implementation Act of 1988.

(e) *Corresponding Five-Year Average Monthly Import Price* for a particular day means the average import price of a Canadian fresh fruit or vegetable imported into the United States from Canada, for the calendar month in which that day occurs, for that month in each of the preceding 5 years, excluding the years with the highest and lowest monthly averages.

(f) *F.O.B. Point of Shipment Price in Canada* means the daily average of prices of a particular Canadian fresh fruit or vegetable imported into the United States from Canada that are reported to the U.S. Customs Service at the U.S. border as part of the official documentation accompanying such shipments less freight costs where applicable.

(g) *Fresh Fruit or Vegetable* means a fruit or vegetable determined in accordance with § 1560.3 within one of the HS headings.

(h) *HS heading* means any of the following tariff headings of the Harmonized System (HS) as modified by the description for each heading:

HS tariff heading	Description
07.01 .....	Potatoes, fresh or chilled.
07.02 .....	Tomatoes, fresh or chilled.
07.03 .....	Onions, shallots, garlic, leeks, and other alliacious vegetables, fresh or chilled.
07.04 .....	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled.
07.05 .....	Lettuce ( <i>lactuca sativa</i> ) and chicory ( <i>cichorium spp.</i> ), fresh or chilled.
07.06 .....	Carrots, salad beets or beetroot, salsify, celeriac, radishes and similar edible roots (excluding turnips), fresh or chilled.
07.07 .....	Cucumbers and gherkins, fresh or chilled.
07.08 .....	Leguminous vegetables, shelled or unshelled, fresh or chilled.
07.09 .....	Other vegetables (excluding truffles), fresh or chilled.
08.06.10 .....	Grapes, fresh.
08.08.20 .....	Pears and quinces, fresh.
08.09 .....	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh.